

2005 DRAFTING REQUEST

Bill

Received: **07/19/2005**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Ronald Brown (608) 266-8546**

By/Representing: **Dan Lindstedt**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - emergency med services**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Brown@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Statewide trauma care system changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 08/16/2005	wjackson 08/23/2005		_____			S&L
/1			jfrantze 08/24/2005	_____	sbasford 08/24/2005		S&L
/2	dkennedy 10/18/2005	wjackson 10/19/2005	chaugen 10/20/2005	_____	lemery 10/20/2005	sbasford 11/28/2005	

FE Sent For:

<END>

At
Intro.

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/?	dkennedy	1 WLj 8/23	8/24	8/24			

FE Sent For:

<END>

Hurley, Peggy

From: Lindstedt, Daniel
Sent: Monday, July 18, 2005 5:21 PM
To: Hurley, Peggy
Subject: Drafting Instructions for Performance Improvement bill

Importance: High

Peggy:

I had thought I sent this to you awhile back, but in reviewing my notes, I believe I neglected to. Either way...

Attached is an e-mail and drafting instructions for State Trauma System Performance Improvement language. Please review the attached e-mail and drafting instructions and contact me. I would like to eventually have the drafting instructions used to turn this into language and an LRB.

Please review and contact me prior to drafting to make sure we're on the same page.

Thank you in advance for you attention to this matter.

- Dan

Excerpt from E-mail:

"The purpose for this correspondence is ask for your assistance in implementing effective performance improvement language to allow proper development of the State of Wisconsin Trauma System. Performance Improvement is a key component of the trauma system. The current language is not adequate to cover civil liability and discoverability for facilities, EMS Units and the health care providers that will be participating in Performance Improvement at the RTACs (Regional Trauma Advisory Council) and State Level, especially with the implementation of the state registry and associated data base."

Drafting Instructions:



Potential PI
language for the ...

Daniel Lindstedt

Clerk, Senate Committee on Veterans, Homeland Security,
Military Affairs, Small Business and Government Reform

Office of State Senator Ron Brown

State Capitol, Room 409 South
Madison, WI 53707-7882
(608) 266-8546 (o)
(608) 267-2871 (f)

POTENTIAL PERFORMANCE IMPROVEMENT LANGUAGE FOR THE TRAUMA CARE SYSTEM

2001 WI Act 16 (This is the language that currently exists)

WI Stats 146.56 Statewide trauma care system

(1) The department shall develop and implement a statewide trauma care system. The department shall seek the advice of the statewide trauma advisory council under s. 15.197 (25) in developing and implementing the system, and, as part of the system, shall develop regional trauma advisory councils.

WI Stats 146.56

(2) The department shall promulgate rules to develop and implement the system. The rules shall include a method by which to classify all hospitals as to their respective emergency care capabilities. The classification rule shall be based on standards developed by the American College of Surgeons. Within 180 days after promulgation of the classification rule, and every 3 years thereafter, each hospital shall certify to the department the classification level of trauma care services that is provided by the hospital, based on the rule. The department may require a hospital to document the basis for its certification. The department may not direct a hospital to establish a certain level of certification. Confidential injury data that is collected under this subsection shall be used for confidential review relating to performance improvements in the trauma care system, and may be used for no other purpose.

Suggested amendment to section 146.56 through the creation of new subsection (3).

(3) All information and documents collected and reported by a hospital under sub. (2), and all information and documents procured by or furnished to the department, the statewide trauma advisory council under s. 15.197(25), or regional trauma advisory councils in connection with

performance improvement activities, certifications under sub. (2), and the classification of the hospital's emergency care capabilities shall be confidential. Such information and documents shall be privileged and immune from discovery under s. 804.10(4), and may not be used or admitted into evidence in any medical malpractice or other civil action. No person serving on or communicating information to the department, the statewide trauma advisory council, or a regional trauma advisory council shall be examined as to any such communications or to the finding or recommendations of such department or council. A person serving on or communicating information to the department, the statewide trauma advisory council or a regional trauma advisory council shall not be subject to an action for civil damages for actions taken or statements made in good faith.

FYI 804.10(4) states:

Upon receipt of written authorization and consent signed by a person who has been the subject of medical care or treatment, or in case of the death of such person, signed by the personal representative or by the beneficiary of an insurance policy on the person's life, the physician or other person having custody of any medical or hospital records or reports concerning such care or treatment, shall forthwith permit the person designated in such authorization to inspect and copy such records and reports. Any person having custody of such records and reports who unreasonably refuses to comply with such authorization shall be liable to the party seeking the records or reports for the reasonable and necessary costs of enforcing the party's right to discover.

Kennedy, Debora

To: Lindstedt, Daniel
Subject: RE: Performance Improvement Draft

You're very welcome.

From: Lindstedt, Daniel
Sent: Tuesday, August 16, 2005 10:59 AM
To: Kennedy, Debora
Subject: RE: Performance Improvement Draft

Sounds good.

Thanks!

- Dan

From: Kennedy, Debora
Sent: Tuesday, August 16, 2005 10:00 AM
To: Lindstedt, Daniel
Subject: RE: Performance Improvement Draft

Dan, I completed that draft on the 12th; however, I put it on Bob Nelson's desk to review, since it involves rather broad powers in the area of court procedure, which is not my drafting area; I also am unsure whether the immunity proposed for a DHFS staf member is superfluous to current state employee immunity. Bob is currently on vacation and is scheduled to be back on August 22--we should probably be able to get to you a first draft that week.

From: Lindstedt, Daniel
Sent: Tuesday, August 16, 2005 9:32 AM
To: Kennedy, Debora
Subject: Performance Improvement Draft
Importance: High

Debora:

Could you please let me know when I can expect a draft of the Performance Improvement Language that I sent over to you and we discussed about 2 or 3 weeks ago?

Thanks!

- Dan

Daniel Lindstedt
Clerk, Senate Committee on Veterans, Homeland Security,
Military Affairs, Small Business and Government Reform

Office of State Senator Ron Brown
State Capitol, Room 409 South
Madison, WI 53707-7882
(608) 266-8546 (o)
(608) 267-2871 (f)



(By 2/25, please)

State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3398/2 1

DAK:.....

WJ

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Gen

from civil liability

- 1 AN ACT ...; relating to: confidentiality of certain information and documents and
2 privilege and ~~civil~~ immunity for certain persons under the statewide trauma
3 care system.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) must develop and implement a statewide trauma care system, seeking the advice of the Statewide Trauma Advisory Council (STAC); as part of the development and implementation, DHFS must develop regional trauma advisory councils. DHFS must promulgate rules concerning the trauma care system that include a method by which to classify all hospitals as to their emergency care capabilities. Within 180 * days after the rules are promulgated and every three years thereafter, all hospitals must certify to DHFS the classification level of trauma care services provided by the hospital. DHFS may request a hospital to document the basis for its certification. Confidential injury data collected under these requirements must be used only for confidential review relating to performance improvements in the trauma care system.

This bill makes confidential all information and documents collected and reported by a hospital to DHFS under the trauma care system. The bill also makes confidential all information and documents procured by or furnished to DHFS, STAC, or regional trauma advisory councils in connection with performance activities, certifications, and classifications of hospitals' emergency care capabilities * under the trauma care system; ^{the bill} and prohibits ^{the} ~~their~~ use or admission into evidence ^{of} in civil actions. With respect to the communications, findings, or recommendations

such information and documents

made by a DHFS staff member or ^{an} individual member of STAC or a regional trauma advisory council, the bill prohibits examination of the staff member or individual in an action for civil damages and provides immunity from civil liability for actions taken or omitted by the staff member or individual in an official capacity and for statements made in good faith.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.56 (3) of the statutes is created to read:

146.56 (3) All information and documents collected and reported by a hospital under sub. (2) and all information and documents procured by or furnished to the department, the ~~Statewide Trauma Advisory Council~~, or regional trauma advisory councils with respect to performance improvement activities, certifications under sub. (2), and the classification of a hospital's emergency care capabilities are immune from discovery under s. 804.10 (4), confidential, and privileged and may not be used or admitted into evidence in a civil action. ^{All of the following apply to a communication made by a staff member of the department or individual serving on the ~~Statewide Trauma Advisory Council~~ or a regional trauma advisory council, and to a finding or recommendation made under this section by the department, the ~~Statewide Trauma Advisory Council~~, or a regional trauma advisory council.}

(a) The staff member or individual may not be examined in an action for civil damages with respect to the communication, finding, or recommendation.

(b) The staff member or individual has immunity from civil liability, with respect to the communication, finding or recommendation, for any of the following:

1. An action taken or omitted by the staff member ^{or} individual in an official capacity.

1 2. A statement made in good faith by the staff member or individual in an
2 official capacity.

3 (END)

MEMORANDUM

To: Debora
From: Wendy
Subject: 05-3398/1
Date: August 23, 2005

Since you are on vacation, I made the following changes to this draft without discussing them with you first.

- ✓ 1. In the analysis, second paragraph, second sentence, I made the following change:
“The bill also makes confidential all information and documents ... under the trauma care system; *the bill prohibits the use of or admission* into evidence *such information and documents* in civil actions.”
2. Question: In the analysis and at 2-2, is the phrase “collected *and reported*” accurate? In s. 146.56 (2), I don’t see where a hospital must *report* the information and documents. I made no change to this phrase in either place.
- ✓ 3. In the statutes, I think “statewide trauma advisory council” should be lowercased.
- ✓ 4. In s. 146.56 (3) (intro.), I think the last sentence is clearer restructured as follows:
“*To* a communication made by a staff member of the department or *by* an individual serving on the statewide trauma advisory council or a regional trauma advisory council, and to a finding or recommendation made under this section by the department, the statewide trauma advisory council, or a regional trauma advisory council, *all of the following apply:*”

Thank you.

Kennedy, Debora

From: Lindstedt, Daniel
Sent: Monday, October 10, 2005 12:31 PM
To: Kennedy, Debora
Subject: FW: drafting request

Importance: High

Attachments: State_Trauma_System_Legislation___Privileged_Status___Redlined_THT___09_16_05.doc

Debora:

Please make the highlighted changes to this draft as indicated in the attached Word document.

Thank you.

From: Lindstedt, Daniel
Sent: Monday, October 10, 2005 11:56 AM
To: Tradewell, Becky; Ryan, Robin
Subject: drafting request

Good morning.

Please see the e-mail below and let me know if either of you might be able to assist with this drafting request.

Thank you.

- Dan

-----Original Message-----

From: Kennedy, Debora
Sent: Monday, October 10, 2005 11:50 AM
To: Lindstedt, Daniel
Subject: Out of Office AutoReply: PI Language redraft

I will be out of the office from October 6 to October 16. If you need assistance, please contact Becky Tradewell at 608 266-7290 or Robin Ryan at 608 261-6927.

From: Lindstedt, Daniel
Sent: Monday, October 10, 2005 11:50 AM
To: Kennedy, Debora
Subject: PI Language redraft



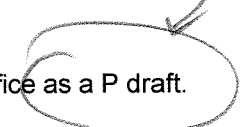
State_Trauma_Syst
em_Legislatio...

Deborah:

If you would, please review the changes in the attached language and please send to our office as a P draft.

Thank you.

From Dan 10/18:
IGNORE
THIS

A handwritten note in black ink that says "From Dan 10/18: IGNORE THIS". An arrow points from the word "THIS" down to a circled area in the text "please send to our office as a P draft." in the previous block.

- Dan

Daniel Lindstedt

Clerk, Senate Committee on Veterans, Homeland Security,
Military Affairs, Small Business and Government Reform

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2005 – 2006 LEGISLATURE

2005 BILL

AN ACT *to create* 146.56 (3) of the statutes; **relating to:** confidentiality of certain information and documents and privilege and immunity from civil liability for certain persons under the statewide trauma care system.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) must develop and implement a statewide trauma care system, seeking the advice of the Statewide Trauma Advisory Council (STAC); as part of the development and implementation, DHFS must develop regional trauma advisory councils. DHFS must promulgate rules concerning the trauma care system that include a method by which to classify all hospitals as to their emergency care capabilities. Within 180 days after the rules are promulgated, and every three years thereafter, all hospitals must certify to DHFS the classification level of trauma care services provided by the hospital. DHFS may request a hospital to document the basis for its certification. Confidential injury data collected under these requirements must be used only for confidential review relating to performance improvements in the trauma care system.

This bill makes confidential all information and documents collected and reported by a hospital to DHFS under the trauma care system. The bill also makes confidential all information and documents procured by or furnished to DHFS, STAC, or regional trauma advisory councils in connection with performance activities, certifications by hospitals concerning their emergency care capabilities under the trauma care system, and documentation submitted by hospitals concerning such certifications; the bill prohibits the use of or admission into evidence such information and documents in civil actions. With respect to the communications, findings, or recommendations made by a DHFS staff member or an individual member of STAC or a regional trauma advisory council, the bill prohibits examination of the staff member or individual in an action for civil damages and provides immunity from civil liability for actions taken or omitted by the staff member or individual in an official capacity and for statements made in good faith.

Deleted: , and classifications of hospitals'

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.56 (3) of the statutes is created to read:

146.56 (3) All information and documents collected and reported by a hospital under sub. (2) and all information and documents procured by or furnished to the department, the statewide trauma

advisory council, or regional trauma advisory councils with respect to performance improvement activities, certifications by a hospital under sub. (2), and documentation of the basis for a hospital's certifications under sub. (2) are immune from discovery under ch. 804, confidential, and privileged, and may not be used or admitted into evidence in a civil action. With respect to a communication made by a staff member of the department or by an individual serving on the statewide trauma advisory council or a regional trauma advisory council, and a finding or recommendation made under this section by the department, the statewide trauma advisory council, or a regional trauma advisory council, all of the following apply:

Deleted: the classification of a hospital's emergency care capabilities

Deleted: s. 804.10 (4),

Deleted: To

Deleted: to

(a) The staff member or individual may not be examined in an action for civil damages with respect to the communication, finding, or recommendation.

(b) The staff member or individual has immunity from civil liability, with respect to the communication, finding, or recommendation, for any of the following:

1. An action taken or omitted by the staff member or individual in an official capacity.

2. A statement made in good faith by the staff member or individual in an official capacity.

(END)



2005 BILL

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^{provided} This bill makes confidential all information and documents ~~collected and reported~~ by a hospital to DHFS under the trauma care system. The bill also makes confidential all information and documents procured by or furnished to DHFS, STAC, or regional trauma advisory councils in connection with performance activities, certifications, and ~~classifications of hospitals' emergency care capabilities~~ ^{documentation of the bases for hospitals' certifications} under the trauma care system; the bill prohibits the use of or admission into evidence ^{improvement}

BILL

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sub. (2), and ~~the classification of a hospital's emergency care capabilities~~ are immune

cho
from discovery under ~~§ 804.16(4)~~ confidential, and privileged and may not be used or admitted into evidence in a civil action. *To* a communication made by a staff

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With respect
documentation of the bases for hospitals' certifications under sub(2)

BILL

1 2. A statement made in good faith by the staff member or individual in an
2 official capacity.

3 (END)

Barman, Mike

From: Lindstedt, Daniel
Sent: Monday, November 28, 2005 12:31 PM
To: LRB.Legal
Subject: Draft review: LRB 05-3398/2 Topic: Statewide trauma care system changes

It has been requested by <Lindstedt, Daniel> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-3398/2 Topic: Statewide trauma care system changes